

Division of Securities
Utah Department of Commerce
160 East 300 South
P. O. Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
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**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:

**PEAK FUNDING, INC., and
LELAND WHEELER**

Respondents.

ORDER TO SHOW CAUSE

Docket No. SD.06-0029

Docket No. SD.06-0030

It appears to the Director of the Utah Division of Securities (Director) that Peak Funding, Inc., and Leland Wheeler (Respondents) may have engaged in acts and practices that violate the Utah Uniform Securities Act, Utah Code Ann. § 61-1-1, et seq. (the Act). Those acts are more fully described herein. Based upon information discovered in the course of the investigation of this matter by the Utah Division of Securities (Division), the Director issues this Order to Show Cause in accordance with the provisions of § 61-1-20(1) of the Act.

STATEMENT OF JURISDICTION

1. Jurisdiction over the Respondents and subject matter is appropriate in this matter because the Division alleges that the Respondents violated § 61-1-1 (Securities Fraud) of the Act while engaged in the offer and sale of securities in Utah.

STATEMENT OF FACTS

THE PARTIES

2. Peak Funding, Inc. (Peak Funding), is a New York corporation in good standing. Peak Funding was registered in the state of New York on May 13, 1999. Peak Funding's business address is 100 Quentin Roosevelt Blvd., Garden City, New York.
3. Leland Wheeler (Wheeler), upon information and belief, resides in Steuben County, New York. At all times relevant to the matter stated herein, Wheeler was a sales representative for Peak Funding.

GENERAL ALLEGATIONS

4. From October 7 to November 4, 2005, Peak Funding and Wheeler defrauded a Utah investor (Investor) out of \$14,781.03 by soliciting an investment in a "Secured Business Loan" which promised a loan of up to \$300,000 for an up-front fee.
5. The investment scheme began on September 28, 2005, when Investor received a cold call from Wheeler, who offered Investor the opportunity to obtain a loan through his company, Peak Funding.

6. Wheeler told Investor he was a sales representative for Peak Funding, and that Investor was approved to receive a loan of \$200,000, from an unnamed lender. Wheeler told Investor he could not disclose the identity of the lender due to privacy concerns.
7. Wheeler told Investor he needed to complete some documents, fax them back to Wheeler, and send an "Insurance Deposit" in the amount of \$3,764.61 to a "courier" in Michigan. Wheeler said that in return for paying the "Insurance Deposit," Investor would receive a loan of \$200,000 deposited directly into his bank account. Wheeler told Investor the "Insurance Deposit" would be held in a secure account and earn interest while the loan was processed.
8. On or about September 29, 2005, Investor received a "Loan Agreement" and "Peak Funding Loan Disclosure Information" (the Loan Agreements), by fax from Peak Funding. The Loan Agreements stated that, in return for paying an "Insurance Deposit" or "Insurance Premium", the Investor would receive a loan in the amount of \$200,000, at a rate of 4% fixed yearly interest, for a term of 30 years. The Loan Agreements identified Wheeler as a representative of Peak Funding, and purportedly bore the signature of a "Richard Blair," supposedly Peak Funding's "senior vice president."
9. Prior to investing the up-front fee for the loan, Investor provided Wheeler with his account number at America First Credit Union, and also sent, by fax, a copy of his social security card, driver's license, and a paycheck stub.

10. On October 7, 2005, Investor sent an "Insurance Deposit" of \$3,764.61, by Western Union, to a "courier" in Troy, Michigan.
11. The following day, Wheeler telephoned Investor and told him the lender, still unidentified, felt uncomfortable sending Investor the loan funds, and that an additional "Insurance Deposit" of \$4,759.44 was required. Wheeler told Investor the additional deposit would have the effect of raising the loan amount from \$200,000 to \$250,000.
12. On October 12, 2005, Investor sent a second "Insurance Deposit" of \$4,759.44, by Western Union, to a "courier" in Troy, Michigan.
13. Once Investor verified that his second deposit had been received by the "courier," he telephoned Wheeler to check on the status of his loan. Investor tried to contact Wheeler and Peak Funding for four days following the payment of the second "Insurance Deposit" with no success.
14. On October 18, 2006, five days after wiring the second deposit, Investor closed his account with his credit union, notified the credit bureaus, put a fraud alert on his credit reports. Investor also informed the driver's license division and social security administration of the situation.
15. On October 19, 2005, Investor telephoned Wheeler. Wheeler told Investor he had been on vacation and was unable to return Investor's telephone calls. Wheeler told Investor his loan proceeds had not been wired because Investor closed his account at the credit

- union. Wheeler said the lender was charged \$3,390 by Investor's credit union for attempting to deposit the loan funds into the closed account.
16. Wheeler told Investor that, if he paid \$4,183.99 to the lender to cover costs, which included the \$3,390 supposedly incurred for attempting to deposit the money into Investor's account, Investor would receive an upgraded loan of \$300,000, and the funds would be sent by Federal Express to Investor's home.
 17. On October 26, 2005, Investor sent \$4,183.99, by Western Union, to a courier in Troy, Michigan.
 18. Within a few days of sending money to cover the lender's costs, Investor telephoned Wheeler. Wheeler told Investor the lender was still not comfortable with the situation, and that he knew of an unnamed Canadian lender who would complete the loan with an additional "Insurance Deposit" of \$2,072.99, including Western Union fees. Wheeler told Investor this was a "big time lender" who would have no concerns about sending the loan funds to Investor.
 19. On November 4, 2005, Investor sent the third deposit of \$2,072.99, by Western Union, to a courier in Canada.
 20. Soon thereafter, Investor spoke with Wheeler on the telephone to check on the status of the loan. Wheeler told Investor the third deposit did not make it to the Canadian lender because the lender was filing bankruptcy. Wheeler said Investor's deposits had been placed in a common account, and if Investor wired an additional "Insurance Deposit" into

the same account, he would receive a government grant in addition to the loan, and the grant would not have to be paid back.

21. Investor told Wheeler he had no more money and wanted all of his money returned.
22. Wheeler agreed to return Investor's money, but said it would take 30 business days.
23. Despite many demands, Investor has not received his insurance deposits or loan proceeds from Wheeler or Peak Funding.

CAUSES OF ACTION

COUNT I

Securities Fraud under § 61-1-1 of the Act (Peak Funding and Wheeler)

24. The Division incorporates and re-alleges paragraphs 1 through 23.
25. The "Secured Business Loan" offered and sold by Peak Funding and Wheeler is a security under § 61-1-13(1)(x)(i)(F) (evidence of indebtedness). Peak Funding and Wheeler sold a "Loan Agreement" to Investor for substantial consideration, and Investor received an enforceable obligation which contemplated the flow of funds.
26. In connection with the offer and sale of a security, Peak Funding and Wheeler, directly and indirectly, made a false statement to Investor when they told him the lender was charged \$3,390, by Investor's credit union, for attempting to deposit money into Investor's closed account. In fact, no lending institution charges a fee for attempting to deposit money into a closed account.

27. In connection with the offer and sale of a security to Investor, Peak Funding and Wheeler, directly and indirectly, failed to disclose material information, including, but not limited to, the following:
- a. That in December 1996, in the state of New York, Wheeler petitioned for bankruptcy under Chapter 7, and received a discharge in April 1997;
 - b. Some or all of the information typically provided in an offering statement or prospectus regarding Peak Funding and the unnamed lenders, such as:
 - i. The identities of the lenders;
 - ii. The business and operating history for the lenders and for Peak Funding;
 - iii. The success rate of getting loans for other investors;
 - iv. Where the “Insurance Deposits” were held and under what conditions;
 - v. Identities of the principals for Peak Funding and the lenders, along with their experience in this type of business;
 - vi. Agent commissions or compensation for selling the investment;
 - vii. Financial statements for the companies;
 - viii. The market for the product of the companies;
 - ix. The nature of the competition for the product;
 - x. Current capitalization of the issuer of the securities;
 - xi. A description of how the investment would be used by the business;
 - xii. Risk factors for investors;

- xiii. The number of other investors;
 - xiv. The minimum capitalization needed to participate in the investment;
 - xv. The disposition of any investments received if the minimum capitalization were not achieved;
 - xvi. The liquidity of the investment;
 - xvii. Discussion of pertinent suitability factors for the investment;
 - xviii. The proposed use of the investment proceeds;
 - xix. Any conflicts of interest the issuer, the principals, or the agent may have with regard to the investment;
 - xx. Whether the investment is a registered security or exempt from registration; and
 - xxi. Whether the person selling the investment was licensed.
43. Based on the above, Peak Funding and Wheeler willfully violated § 61-1-1 of the Act.

ORDER

The Director, pursuant to § 61-1-20 of the Act, hereby orders Respondents to appear at a formal hearing to be conducted in accordance with Utah Code Ann. §§ 63-46b-4 and 63-46b-6 through -10, and held before the Utah Division of Securities. The hearing will occur on Thursday, June 22, 2006, at 9:00 a.m., at the office of the Utah Division of Securities, located in the Heber Wells Building, 160 East 300 South, 2nd Floor, Salt Lake City, Utah. If Respondents fail to file an answer or appear at the hearing, the Division of Securities may hold

Respondents in default, and a fine may be imposed in accordance with Utah Code Ann. § 63-46b-11. In lieu of default, the Division may decide to proceed with the hearing under § 63-46b-10. At the hearing, Respondents may show cause, if any they have:


- a. Why Peak Funding, Inc. and Leland Wheeler should not be found to have engaged in the violations alleged by the Division in this Order to Show Cause;
- b. Why Peak Funding, Inc. and Leland Wheeler should not be ordered to cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1-1, or any other section of the Act;
- c. Why Peak Funding, Inc. should not be ordered to pay a fine of twenty thousand dollars (\$20,000) to the Division, to be offset, dollar for dollar, by any restitution paid to the victim; and
- d. Why Leland Wheeler should not be ordered to pay a fine of twenty thousand dollars (\$20,000) to the Division, to be offset, dollar for dollar, by any restitution paid to the victim.

DATED this 19TH day of May, 2006.


WAYNE KLEIN
Director, Utah Division of Securities



Approved:


JEFFREY BUCKNER
Assistant Attorney General

M.H.

Division of Securities
Utah Department of Commerce
160 East 300 South
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Salt Lake City, UT 84114-6760
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Respondents.

NOTICE OF AGENCY ACTION

Docket No. SD-06-0029

Docket No. SD-06-0030

THE DIVISION OF SECURITIES TO THE ABOVE-NAMED RESPONDENTS:

The purpose of this Notice of Agency Action is to inform you that the Division hereby commences a formal adjudicative proceeding against you as of the date of the mailing of the Order to Show Cause. The authority and procedure by which this proceeding is commenced are provided by Utah Code Ann. §§ 63-46b-3 and 63-46b-6 through 11. The facts on which this action is based are set forth in the foregoing Order to Show Cause.

Within thirty (30) days of the mailing date of this notice, you are required to file an Answer with the Division. The Answer must include the information required by Utah Code § 63-46b-6(1). In addition, you are required by § 63-46b-6(3) to state: a) by paragraph, whether you admit or deny each allegation contained in the Order to Show Cause, including a detailed explanation for any response other than an unqualified admission; b) any additional facts or

documents which you assert are relevant in light of the allegations made; and c) any affirmative defenses (including exemptions or exceptions contained within the Utah Uniform Securities Act) which you assert are applicable. To the extent that factual allegations or allegations of violations contained in the Order to Show Cause are not disputed in your Answer, they will be deemed admitted.

Your Answer should be filed with the Division, attention Pam Radzinski, P.O. Box 146760, Salt Lake City, Utah 84114-6760. A copy of your Answer should also be mailed to the Division's attorney, Jeff Buckner, Assistant Attorney General in the Utah Attorney General's Office, 160 East 300 South, P.O. Box 140872, Salt Lake City Utah 84114-0872, telephone (801) 366-0310.


A hearing date has been set for Thursday, June 22, 2006, at 9:00 a.m., at the office of the Utah Division of Securities, located in the Heber Wells Building, 160 East 300 South, 2nd Floor, Salt Lake City, Utah.


If you fail to file an Answer, as set forth herein, or fail to appear at the hearing, the Division of Securities may hold you in default, and a fine and other sanctions may be imposed against you in accordance with Utah Code Ann. § 63-46b-11, without the necessity of providing you with any further notice. In lieu of default, the Division may decide to proceed with the hearing under § 63-46b-10. At the hearing, you may appear and be heard and present evidence on your behalf. You may be represented by counsel during these proceedings.

The presiding officer in this case is Wayne Klein, Director, Division of Securities, 160 East 300 South, P.O. Box 146760, Salt Lake City, UT 84114-6760, telephone (801) 530-6600.

Questions regarding the Order to Show Cause and Notice of Agency Action should be directed to the Division's attorney, Jeff Buckner, at (801) 366-0310.

DATED this 19th day of May, 2006.


WAYNE KLEIN
Director, Division of Securities
Utah Department of Commerce



Certificate of Mailing

I certify that on the 22ND day of May, 2006, I mailed, by certified mail, a true and correct copy of the Order to Show Cause and Notice of Agency Action to:

Peak Funding, Inc.
100 Quentin Roosevelt Blvd.
Garden City, NY 11530

Certified Mail # 70051820 0002 02595721

Leland Wheeler
9566 Welty Road
Lindley, NY 14858

Certified Mail # 70051820 0002 02595738

PAMALA RADZINSKI
Executive Secretary